

REMARKS

Claims 1-8 are now pending in the above-captioned application.

NEW MATTER OBJECTION

The Preliminary Amendment of June 4, 2008 was objected to as containing new matter.

In particular, Page 1, which references temperature compensation was object to as new matter. By the present amendment, the term "temperature compensated" has been removed from Page 1 of the Specification, and thus this portion of the new matter objection has been overcome.

Claim 2 as also objected to on the grounds of new matter. In particular, the method steps now found in claim 2 were objected to as new matter. This portion of the new matter rejection will be addressed in connection with the §112 rejections below.

REJECTION UNDER 35 U.S.C. §112, First Paragraph

Claims 1-5 were rejected under 35 U.S.C. §112, first paragraph on the ground that the claims contain subject matter not described in the specification in such a manner that one of ordinary skill in the art can make or use the invention.

The thrust of this rejection is that the terminology of the claims differs from that of the Specification. The original Specification was filed based on a Canadian Application 2,463,477 filed *pro se* in French. A copy of that application was presented with the filing papers in the present application for the Examiner's reference. Some translation errors and idiomatic English errors occurred in translating the application to English. The preliminary amendment of June 4, 2008 attempted to correct these errors.

The Examiner's objections are in most instances, well taken and applicant has addressed these concerns as follows:

1. Removable Exhaust Valve

The Examiner correctly notes that the Specification recites a "removable exhaust valve" 17 in paragraph [0018]. The original Claims of the priority document and the PCT Application refers to this element as "un clapet amovible" which translates to "a removable valve."

Applicant has amended claims 1 and 2 to delete reference to the term. Claim 5 has been amended to recite a removable exhaust valve. New claims 6 and 7 have been added, along the lines of claim 5, but dependent from claims 1 and 2, respectively, to recite this ventilation valve.

2. Two-Axis Leveling

The Examiner also correctly notes that the Specification refers to a "lever [sic] 6" while the claims call out a "leveler, a locking apparatus, and a two-axis leveling apparatus".

Element (6) is indeed a lever for retracting the wheels. In the original priority document, this was recited on page 3 in the step of "actionne les leviers de retrait des roulettes" which translated literally means "actuate the levers of withdrawal of the casters".

However, element 6 is not the leveling device referred to in the Claims. Element 6 is merely the wheel retraction device. Elements 10 and 11 are used to level the device. The original Specification of the priority document recites this step on page 4 as "ajuste les deux niveaux (10) dans les deux axes avec les manettes (11)" which literally translates to "adjust the two levels (10) in the two axes with the levers (11).

Page 2 of the priority document describes the apparatus as mounted on "une chariot nivelable" which loosely translated, comes out as "levelable carriage." The Examiner has noted that the Specification, as filed, contains the word "level-able" which should be --levelable--, the latter arguably not a proper English word (at least according to MS-WORD). Similarly, the word "nivelable" is not technically a French word, but a derivative of the word "level" (niveau) in French, with the suffix "able" added on. Given that the root word "niveau" is known as "level", one of ordinary skill in the art would realize that "nivelable" means to level, particularly when taken in context with the description above from page 4 of the priority document.

niveau = level *[noun-masculine]

nivelent = level *[verb]

niveler = level *[verb]

nivelez = level *[verb]

nivelons = level *[verb]

Paragraph [0018] of the present Specification recites that the tanks are mounted on a level-able (or levelable) vehicle 18, which is a literal translation of the Priority document. So no new matter has been entered.

Paragraph [0020] of the present Specification, as originally filed, recited step 7 as "Adjust the two levels 10 to both axis [sic] with the two handles 11" which was amended to --Adjust the two levels 10 to both axes with the two handles 11 to level the unit--. This latter recitation is clearly supported by the original Specification as-filed and the priority document, as both describe the levers (or handles) 11 used to level the "leveable" carriage or vehicle.

The test for whether an application is enabling under 35 USC §112, first paragraph, is whether one of ordinary skill in the art can make or use the invention from the application as-filed, without undue experimentation. Material in the Specification, Claims, or Drawings, as filed, does not constitute new matter. See, MPEP §608.04(a).

In the present instance, The Figure clearly shows adjustment handles 11, one horizontally mounted and one vertically mounted, and these are described as leveling the vehicle, and the vehicle is described in the Specification as levelable (or level-able). Clearly, one of ordinary skill in the art could determine how to build a leveling device into an instrument, as leveling in instrumentation is well known in the art and such mechanisms are within the purview of the average technician or fabricator. Thus, applicant submits that the Specification does adequately disclose this feature.

As for the claims, claims 1 and 2, as amended recite a "levable" vehicle, and as noted, paragraph [0018] of the present application supports this limitation.

Claim 2 further recited the step of "leveling the calibrator using a leveler mounted to the calibrator to lift vehicle wheels off the ground" which may be technically inaccurate, as the Examiner has correctly noted that "lever" 6 lifts the wheels off the ground. Leveler 11 levels the device. In

addition, there is no antecedent basis for "the wheels" in this claim. Thus, the limitation of lifting the wheels off the ground has been struck from claim 2 and put into new dependent claim 8.

Claim 4 recites a locking apparatus for lifting the wheels from the ground. This has been amended to recite "lever" as supported by the Specification. The term is more technically correct, although applicant notes that "means for" language could also be used.

Claim 4 also recites the two-axis leveling apparatus for leveling the calibration apparatus prior to use. As noted above, this limitation is clearly disclosed in paragraph [0020] of the present application and also in the original disclosure document. Again, the wheel retraction lever (6) retracts the wheels and the levers or handles (11) are turned to level the device. The recitation of both these items in claim 4 was somewhat confusing, and thus applicant has broken them out into separate paragraphs in the claim to improve clarity.

3. Steps of Claim 2 versus Method in Disclosure

The last part of this §112 rejection simply cites that the method steps of claim 2 do not coincide with the steps of the method given in the disclosure. This rejection corresponds to the New Matter objection cited above, and thus both will be addressed here. The Examiner did not mention specifically which steps were deemed new matter or non-enabled, so applicant will review all the steps here.

Paragraph [0020] of the Specification recites fourteen method steps in one embodiment of the present application. Applicant is not required to claim all of these steps in his claims, just as he is not required to claim every element of the Specification in every claim.

Step (a) of Claim 2 recites parking the apparatus. This corresponds to the parking step (1) in paragraph [0020].

Step (b), as amended, recites leveling the calibrator. Originally, this step was recited as lifting the wheels off the ground. However, wheels are not necessarily required for the present invention, and retraction of wheels is also not a requirement of the invention. Applicant is not required to recite this limitation. Step (b) was amended to recite leveling the apparatus, which, as noted above, is supported in the Specification in step 7 of paragraph [0022]. This step also was originally step (g) in Claim 2. Thus, there is no "new matter" here and there is support in the Specification for the leveling step.

The Examiner is correct that the amended claim was confusing in that it recited leveling with the wheel retraction levers. This limitation has been removed from the claim, and as such the ambiguity has been removed.

Step (c) recites grounding the calibrator to the fuel pump. This is the same as before the preliminary amendment and is recited as step 3 in paragraph [0020].

Step (d) recites the step of inserting the fuel hose between the terminal valve and the fuel station's underground tank. This corresponds to step 4 in paragraph [0020]. The only change is that the term "exit pipe" has been changed to "terminal valve". Exit pipe 8 is attached to exit valve 13, as illustrated in the Figure and as described in paragraph [0020]. To make the claim language more consistent with the specification, the term "terminal valve" has been changed to "exit valve" in all instances in the claims. However, applicant notes that it is well-settled that applicant is allowed to be his own claim lexicographer, and thus "terminal valve" could also be appropriate.

The use of an exit pipe (e.g., pipe nipple) is not required for the operation of the present invention, as one of ordinary skill in the art can appreciate. Thus, the claim step recites coupling the hose between the gas station tank and the exit valve. An exit pipe may or may not be part of this coupling.

Step (e) recites the steps of filling the tanks one at a time by inserting the fuel pump nozzle into the neck of at least one tank, wherein the neck seals in the fuel fumes. This step corresponds to step 6 of paragraph [0020]. The only change here is semantic. "Gas" has been changed to --fuel-- and "pump nozzle" has been changed to --fuel pump nozzle--. The term "holds" has been changed to --seals-- which is more descriptive. "Holding" in the fumes is the same as "sealing" them in. The original priority document recited the French word "retient" which means "to retain".

In the original priority document, this was recited in page four as step 7 as "Rempli les cuves de essai en introduisant le pistolet de pompe a essence dans le goulet de la cuve d'essai (le goulot retient les vapeurs, il est muni d'une paroi trouée (de dimension pertinent) faisant contact avec pistolet" which literally translates to "Fill the test tanks by introducing the gun of petrol station in the narrow part of the test tank (the neck retains the vapors, it is provided with a perforated wall (of dimension relevant) making contact with the gun)". It is clear that by retaining the vapors, and the use of a narrowed neck with appropriately sized orifice, that the vapors are sealed in.

Step (f), as amended, recites taking a reading if the fuel level in the calibrated tank after dispensing a measured amount of fuel, into the calibrated tank. This is wordier than the recitation of step 8 of paragraph [0020] however it states the same thing. The fuel pump dispenses a measured amount (e.g., five gallons), and the amount is then verified against the calibrations on the calibrated tank. This is the basic definition of calibration - taking a measured amount (as measured by the meter to be calibrated) and then comparing it with the calibrations on a known standard, such as the calibrated tanks of the present invention. One of ordinary skill in the art would understand how a calibration tank is used, and thus the disclosure is enabling to one of ordinary skill in the art and moreover no new matter has been entered.

Step (g) recites the step of noting the readings, which except for semantic editing is the same as step (9) in paragraph [0020]

Step (h) recites the step of opening the tank valve and (as amended) exit valve to empty out the tank. Again, this step, other than semantic editing, is the same as step (10) in paragraph [0020].

Step (i) recites the step of adjusting the calibration of the fuel pump. Again, this step, other than semantic editing, is the same as step (11) in paragraph [0020].

Step (j) recites the step of closing the discharge valve when the tank is empty. Again, this step, other than semantic editing, is the same as step (12) in paragraph [0020].

Step (k) recites the step of insuring that the tank is truly empty before closing the valve by observing the final drops of liquid dripping through the transparent drip reference unit. Again, this step, other than semantic editing, is the same as step (13) in paragraph [0020].

Step (l) recites repeating the test as required. Again, this step, other than semantic editing, is the same as step (14) in paragraph [0020].

Applicant submits that there is no "new matter" in these method steps, other than some method steps (wheel retraction) have been removed and some semantic language has been changed to improve the idiomatic English.

As such, applicant submits that, in view of the present amendment, the rejection be withdrawn.

REJECTION UNDER 35 U.S.C. §112, Second Paragraph

Claims 1-5 were rejected under 35 U.S.C. §112, second paragraph due to some minor informalities which have been corrected by the present amendment.

The Examiner has made a number of helpful suggestions to improving the claim language, all of which have been adopted by the present amendment. As noted previously, "levelable" is flagged by MS-WORD as a misspelling (as nivelable was similarly flagged by a French dictionary). However, as applicant is allowed to be his own claims lexicographer (MPEP §211.01) and since the term "levelable" has been suggested by the Examiner, applicant has amended the claims to include this term.

Also, the phrase "and a sloped bottom" was a dangling modifier, as it was not clear whether this referred to the neck or the tank. The order of recitation has been reverse to make it clear that the tank has a sloped bottom and a neck, not a neck with a sloped bottom.

The terms "at least one tank" and "at least one graduated tank" were used interchangeably. They have been amended to consistently recite --at least one graduated tank--.

The term "leveler" objected to in claim 2, line 13 has been discussed above. The present application clearly discloses a leveling apparatus or leveler.

PRIOR ART REJECTIONS

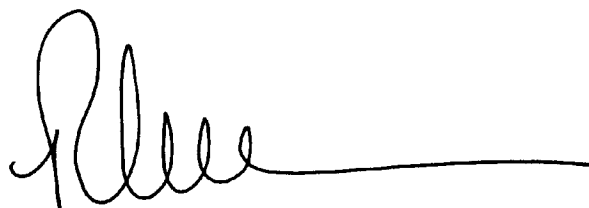
There are no outstanding Prior Art rejection in the present application.

CONCLUSION

The Specification and Claims have been amended to correct minor typographical errors noted by the Examiner and remove any new matter. As explained in the above arguments, the leveler is clearly disclosed in the application as-filed and thus no new matter has been entered. In addition, as explained in the above arguments, the present application is disclosed in such a manner than one of ordinary skill in the art can make or use the invention. As there are no Prior Art rejections in the case, the present application is in condition for allowance. An early Notice of Allowance is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees associated with this communication, including patent application filing fees and processing fees under 37 C.F.R. § 1.16 and 1.17, or credit any overpayment to **Deposit Account No. 50-1393**

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Bell', followed by a long horizontal line extending to the right.

Robert P. Bell
Registration Number 34,546

Robert Platt Bell
Registered Patent Attorney
P.O. Box 13165
Jekyll Island, Georgia 31527

(703) 474-0757